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FILED IN DISTRICT COURT
OKLAHOMA COUNTY

IN THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA

NOV - 6 2019

RICK WARREN
COURT CLERK

IN RE: THE RECUSAL OF JUDGE
KENDRA COLEMAN,
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)
)

MI-2019-917 916 *ln 100*

ORDER

NOW on this 5th day of November, 2019, this Court issues the following Order and Opinion regarding State's Motion to Recuse Judge Kendra Coleman filed in the above entitled matter. The Court, being fully advised in the premises, having reviewed the transcripts of the hearing at issue, the exhibits presented contemporaneous with State's Brief in Support as well as all matters filed of record herein and all relevant authority, finds and orders as follows:

The District Attorney's Office filed this action seeking the recusal of Judge Kendra Coleman pursuant to Rule 15 of the Rules for the District Courts of Oklahoma. Prior to the filing of this case, District Attorney David Prater made an in-camera request to Judge Coleman for recusal in all criminal matters. That request was denied and the instant matter was filed. Judge Coleman held a hearing on this matter on September 19, 2019 and denied the motion. The District Attorney then filed a Request for Rehearing of that ruling by the Presiding Judge of Oklahoma County. Following the recusal of the District Judge assigned to this case (Judge Heather Coyle) and the Presiding Judge, this matter was assigned to the undersigned judge by Order of the Supreme Court entered on the 26th day of September, 2019. This matter is properly before this Court by virtue of that assignment.

In reviewing this matter, this Court has determined, *sua sponte*, that the following issues must be decided in order to make a determination of this matter: (1) whether there is a claim upon which the relief requested by the District Attorney can be granted; and, (2) if there is authority to grant the request made by the District Attorney, whether the facts presented are sufficient to grant the request. In effect, this Court must determine whether the merits can be reached or whether the matter should be dismissed.

Whether in criminal or civil actions, dismissals are generally viewed with disfavor. *Rogers v. Quicktrip Corp.*, 2010 OK 3, 230 P.3d 853. The purpose of a dismissal review "...is to test the law that governs the claim in litigation rather than to examine the underlying facts of that claim." *Rogers*, ¶4. Dismissal is not appropriate unless there is an absence of any cognizable legal theory to support the claim or there are insufficient facts under a cognizable legal theory. In determining whether there is any claim upon which relief can be granted, this Court takes as true all of the allegations in Movant's motion and will make a determination whether relief is possible under any set of facts. *Id.*

Movant's motion cites Rule 15 of the District Courts as authority to request the recusal of Judge Coleman in this separate action. However, a clear reading of Rule 15 does not support that contention. Rule 15 reads:

- a. Before filing any motion to disqualify a judge, an in camera request shall first be made to the judge to disqualify or to transfer *the cause* to another judge. If such request is not satisfactorily resolved, not less than ten (10) days before *the case* is set for trial a motion to disqualify a judge or to transfer *a cause* to another judge may be filed and a copy delivered to the judge.
- b. Any interested party who deems himself aggrieved by the refusal of a judge to grant a motion to disqualify or transfer *a cause* to another judge may re-present his motion to the Chief Judge of the county *in which the cause is pending* or, if the disqualification of a Chief Judge is sought, to the Presiding Judge of the administrative district *by filing in the case* within five (5) days from the date of said refusal a written request for re-hearing. A copy of the request shall be mailed or delivered to the Chief Judge or Presiding Judge, to the adverse party and to the judge who entered the original order. If the hearing before the second judge results in an order adverse to the movant, he shall be granted not more than five (5) days to institute a proceeding in the Supreme Court or the Court of Criminal Appeals for a writ of mandamus. Neither the Supreme Court nor the Court of Criminal Appeals will entertain an original proceeding to disqualify a judge or to direct a judge to transfer *a cause* to another judge unless it is shown that the relief sought was previously denied by the judge to whom the matter was re-presented in accordance with this rule. An order favorable to the moving party may not be reviewed by appeal or other method.
- c. An original proceeding in mandamus to disqualify a judge in *a civil action* or proceeding shall be brought in the Supreme Court; an original proceeding in mandamus to disqualify a judge *in a criminal case* or proceeding shall be brought in the Court of Criminal Appeals. If mandamus is not brought in the appellate court designated as proper by this rule, the case will be transferred to the proper court either on motion or *sua sponte*. Art. VII, § 4 Okla. Const. (Emphasis mine).

The basic rules concerning statutory interpretation are well known. In *TRW/Reda Pump v. Brewington*, 1992 OK 31, 829 P.2d 15, 20 the Supreme Court stated:

The primary goal of statutory construction is to ascertain and follow the intention of the Legislature. If a statute is plain and unambiguous and its meaning clear and no occasion exists for the application of rules of construction a statute will be accorded the meaning expressed by the language used. However, where a statute is ambiguous or its meaning uncertain it is to be given a reasonable construction, one that will avoid absurd consequences if this can be done without violating legislative intent. Further, the Legislature will not be presumed to have done a vain and useless act in the promulgation of a statute, nor will an inept or incorrect choice of words be applied or construed in a manner to defeat the real or obvious purpose of a legislative enactment.

In *Head v. McCracken*, 2004 OK 84, ¶ 13,102 P.3d 670, 680, the Court also stated:

When a court is called on to interpret a statute, the court has no authority to rewrite the enactment merely because it does not comport with the court's view of prudent public policy. Also, the wisdom of choices made within the Legislature's law-making sphere are not our concern, because those choices - absent constitutional or other recognized infirmity - rightly lie within the legislative domain.

Rule 15 is plain and unambiguous and thus applying the foregoing authority thereto, this Court has no authority to change the language contained therein nor to imply additional terms or conditions. Relying on 25 O.S. §25, Movant suggests that the terms "case", "cause" and/or "action" used in Rule 15 may be read as "cases", "causes" and/or "actions" thus providing authority for a global or blanket recusal request under the rule. However, a contrary intention plainly appears from the wording of the statute. The rule recites a time-frame in which a motion must be filed which would be case specific. A plain reading of the rule also demonstrates that an in camera request for recusal must be made within a case pending before that judge, the subsequent motion for recusal must be filed in that case as does the Request for Rehearing. Rule 15 does not provide authority for the filing of a separate action. Accordingly this is not a Rule 15 matter.

20 O.S. §1403 also provides a vehicle for requesting that a judge be disqualified from hearing a cause. That statute provides:

Any party to any cause pending in a court of record may in term time or in vacation file a written application with the clerk of the court, setting forth the grounds or facts upon which the claim is made that the judge is disqualified, and request said judge so to certify, **after reasonable notice to the other side**, same to be presented to such judge, and upon his failure so to do **within three (3) days before said cause is set for trial**, application may be made to the proper tribunal for mandamus requiring him so to do. (Emphasis mine).

Applying the same authority cited above, it is clear that this statute is also case specific. The written application must be filed in the underlying action, notice must be provided to the opposing party and a case specific time frame is delineated. Movant concedes in his argument that this statute does not provide authority for a global request. Furthermore, it is clear that this statute does not provide authority for the filing of a separate action for recusal.

However, it is incumbent on this Court to determine whether there is any legal theory that would allow the relief requested. "A plaintiff is required neither to identify a specific theory of recovery nor to set out the correct remedy or relief to which he (or she) may be entitled. A quest for dismissal should be denied if relief is possible under any set of facts which can be established and is consistent with the allegations". *Rogers, supra*.

The District Attorney filed this case as a criminal matter and an "MI" prefix (criminal miscellaneous) was assigned thereto. Therefore the criminal procedure code found in Title 22 of the Oklahoma Statutes applies to this case. 22 O.S. §387 provides that the exclusive forms of pleading in criminal actions, and the rules by which the sufficiency of pleadings are to be determined, is prescribed by that code exclusively. 22 O.S. §388 states that the first pleading on the part of the state is an indictment or information because a criminal action is defined as a proceeding by which a party is charged with a public offense and brought to trial. 22 O.S. §10.

Although this matter is filed as a criminal case, it is not a prosecution for a public offense. No information or indictment is filed in this matter. Matters filed under MI designations are not cases initiated by the state but are generally matters filed when no case has yet been initiated. For example, police probable cause affidavits and warrant requests which precede the filing of an information are filed under this designation. Trace and trap warrants are generally filed under this designation as well as waivers of extradition which are executed by a defendant without the necessity of the state filing an information. The MI case designation is merely a digital filing cabinet for those matters which occur prior to the inception of a criminal action. Regardless of the case designation, it is clear that this matter is not a criminal action and no authority exists for the state to file an action seeking affirmative relief under the criminal code other than by the filing of a criminal action. 22 O.S. §388

The only exceptions in Title 22 to the requirement of the filing of an information or indictment to commence a criminal action are found in Section 2. The only possibly relevant exception is found at 22 O.S. §2(1) which states that a proceeding for the removal of civil officers of the state need not be brought by an indictment or information. An argument can be made that the request for recusal in all criminal cases is tantamount to a request for removal—at least as to a particular assignment of cases or docket. However, 22 O.S. §2(1) is not applicable to judicial officers who are under the exclusive supervisory and administrative power of the Supreme Court of Oklahoma. *Article 7 of the Oklahoma Constitution*. The only court with the authority to remove a judicial officer is the Court on the Judiciary which has sole and exclusive jurisdiction. *Article 7-A of the Oklahoma Constitution*.

This authority highlights the distinction between requests for recusal and requests for removal. Recusal is an appropriate remedy where impartiality or neutrality is at issue. The standard for recusals is set forth in *State ex rel Larecy v. Sullivan*, 1952 Oklahoma 290, which requires that "[w]here there are circumstances of such nature as to cause doubts as to a judge's partiality, bias or prejudice, it is his duty to disqualify, notwithstanding the fact he personally believes himself to be unprejudiced, unbiased and impartial." However, it should be noted that this is an objective standard. *Merritt v. Hunter*, 575 P.2d 623, 624 (Okla. 1978). As an objective standard, it would not be dependent upon the judge's belief nor the opinion of the moving party. It has been consistently held that every litigant is entitled to nothing less than the "cold neutrality of an impartial judge". *Sullivan*, at ¶ 21. These are the issues Rule 15 and 20 O.S. §1403 were intended to remedy on a case by case basis. A portion of the allegations made by Movant fall within this category. For example, Movant alleges, *inter alia*, bias based upon a belief that

District Attorney David Prater is a racist, bias in favor of campaign contributors, conflicts created by Movant's prosecution of Judge Coleman, and open hostility toward the State. These allegations may be sufficient under Rule 15 if properly filed in cases assigned to Judge Coleman in which the State is a party. However, that is not the vehicle chosen by Movant and as such, the requested relief cannot be granted on these grounds in the case before this Court.

Removal is appropriate where issues of integrity and fitness arise. Article 7-A, §1 of the Oklahoma Constitution and 20 O.S. §1404 clearly delineate those acts which would be grounds for removal. Fitness to sit as a judge is not dependent upon an inquiry into each case, type of case or class of party. It is a broad standard which would be applicable to *any* case that judge is assigned. The bulk of Movant's allegations against Judge Coleman fall within this category. Movant alleges violations of campaign finance and ethics laws, violations of Federal, state and municipal laws and ordinances, and violations of the Code of Judicial Conduct. As stated above, this Court has no jurisdiction over these matters and as such relief cannot be granted on these grounds.

Having found that this action is not an action allowed under the Code of Criminal Procedure and that there is no legal authority which would allow for the relief requested by the District Attorney there is no need to reach the second question of this Court's inquiry. There is no need to decide whether Movant's facts are sufficient to grant his request as there is no legal authority on which to base it. Accordingly, this matter must be dismissed.

In so deciding, this Court does not leave the moving party with "no other avenue" to protect its constitutional rights to a fair and impartial judiciary. The Oklahoma Constitution provides for the exact remedy that the District Attorney seeks. The first safeguard is the authority of the Presiding Judge in making appropriate case assignments and in protecting the judicial system through the exercise of his/her administrative powers. In this case, that authority was properly exercised to protect the integrity of the judicial system and to guard against the appearance of bias or impropriety by the reassignment of Judge Coleman to cases that do not involve the District Attorney.

However, the allegations in this matter go much further than simple allegations of bias. In this matter the District Attorney alleges actions on the behalf of Judge Coleman, which taken as true, would require her removal from the office of District Judge. Recusal is not an adequate remedy for the gross neglect of office, disregard for the Code of Judicial Conduct and the laws of the State of Oklahoma that the District Attorney has alleged in this matter. For these allegations, the appropriate tribunal is the Court on the Judiciary, through the process outlined in Article 7-A, §2 to the Oklahoma Constitution.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that this matter be dismissed.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the allegations set forth in this matter shall be referred by the undersigned to the Council on Judicial Complaints so that the appropriate remedy, if any, can be ascertained through the appropriate channels. In so doing, this Court authorizes the Council on Judicial Complaints, through this Order, to have access to all of the materials on file herein, including but not limited to matters which were previously filed under seal.

IT IS SO ORDERED THIS 5th DAY OF NOVEMBER, 2019!



JUDGE OF THE DISTRICT COURT

CERTIFIED COPY
AS FILED OF RECORD
IN DISTRICT COURT

NOV 08 2019

RICK WARREN COURT CLERK
Rick Warren
Oklahoma County